

§ 125.90

water intake structures to a comparable level that the facility would achieve were it to implement the requirements of § 125.84(b)(1) and (2).

(2) *Monitoring conditions.* At a minimum, the permit must require the permittee to perform the monitoring required in § 125.87. You may modify the monitoring program when the permit is reissued and during the term of the permit based on changes in physical or biological conditions in the vicinity of the cooling water intake structure. The Director may require continued monitoring based on the results of the Verification Monitoring Plan in § 125.86(c)(2)(iv)(D).

(3) *Record keeping and reporting.* At a minimum, the permit must require the permittee to report and keep records as required by § 125.88.

[66 FR 65338, Dec. 18, 2001]

Subpart J—Requirements Applicable to Cooling Water Intake Structures for Phase II Existing Facilities Under Section 316(b) of the Act

SOURCE: 69 FR 41683, July 9, 2004, unless otherwise noted.

§ 125.90 What are the purpose and scope of this subpart?

(a) This subpart establishes requirements that apply to the location, design, construction, and capacity of cooling water intake structures at existing facilities that are subject to this subpart (*i.e.*, Phase II existing facilities). The purpose of these requirements is to establish the best technology available for minimizing adverse environmental impact associated with the use of cooling water intake structures. These requirements are implemented through National Pollutant Discharge Elimination System (NPDES) permits issued under section 402 of the Clean Water Act (CWA).

(b) Existing facilities that are not subject to requirements under this or another subpart of this part must meet requirements under section 316(b) of the CWA determined by the Director on a case-by-case, best professional judgment (BPJ) basis.

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(c) *Alternative regulatory requirements.* Notwithstanding any other provision of this subpart, if a State demonstrates to the Administrator that it has adopted alternative regulatory requirements in its NPDES program that will result in environmental performance within a watershed that is comparable to the reductions of impingement mortality and entrainment that would otherwise be achieved under § 125.94, the Administrator must approve such alternative regulatory requirements.

(d) Nothing in this subpart shall be construed to preclude or deny the right of any State or political subdivision of a State or any interstate agency under section 510 of the CWA to adopt or enforce any requirement with respect to control or abatement of pollution that is not less stringent than those required by Federal law.

EFFECTIVE DATE NOTE: At 72 FR 37109, July 9, 2007, § 125.90(a), (c), and (d) were suspended.

§ 125.91 What is a “Phase II Existing Facility”?

(a) An existing facility, as defined in § 125.93, is a Phase II existing facility subject to this subpart if it meets each of the following criteria:

(1) It is a point source.

(2) It uses or proposes to use cooling water intake structures with a total design intake flow of 50 million gallons per day (MGD) or more to withdraw cooling water from waters of the United States;

(3) As its primary activity, the facility both generates and transmits electric power, or generates electric power but sells it to another entity for transmission; and

(4) It uses at least 25 percent of water withdrawn exclusively for cooling purposes, measured on an average annual basis.

(b) In the case of a Phase II existing facility that is co-located with a manufacturing facility, only that portion of the combined cooling water intake flow that is used by the Phase II facility to generate electricity for sale to another entity will be considered for purposes of determining whether the 50 MGD and 25 percent criteria in paragraphs (a)(2) and (4) of this section have been exceeded.

(c) Use of a cooling water intake structure includes obtaining cooling water by any sort of contract or arrangement with one or more independent suppliers of cooling water if the supplier withdraws water from waters of the United States but is not itself a Phase II existing facility, except as provided in paragraph (d) of this section. This provision is intended to prevent circumvention of these requirements by creating arrangements to receive cooling water from an entity that is not itself a Phase II existing facility.

(d) Notwithstanding paragraph (c) of this section, obtaining cooling water from a public water system or using treated effluent as cooling water does not constitute use of a cooling water intake structure for purposes of this subpart.

EFFECTIVE DATE NOTE: At 72 FR 37109, July 9, 2007, § 125.91 was suspended.

§ 125.92 [Reserved]

§ 125.93 What special definitions apply to this subpart?

In addition to the definitions provided in § 122.3 of this chapter, the following special definitions apply to this subpart:

Adaptive management method is a type of project management method where a facility chooses an approach to meeting the project goal, monitors the effectiveness of that approach, and then based on monitoring and any other relevant information, makes any adjustments necessary to ensure continued progress toward the project's goal. This cycle of activity is repeated as necessary to reach the project's goal.

Annual mean flow means the average of daily flows over a calendar year.

All life stages means eggs, larvae, juveniles, and adults.

Calculation baseline means an estimate of impingement mortality and entrainment that would occur at your site assuming that: the cooling water system has been designed as a once-through system; the opening of the cooling water intake structure is located at, and the face of the standard 3/8-inch mesh traveling screen is oriented parallel to, the shoreline near the surface of the source waterbody;

and the baseline practices, procedures, and structural configuration are those that your facility would maintain in the absence of any structural or operational controls, including flow or velocity reductions, implemented in whole or in part for the purposes of reducing impingement mortality and entrainment. You may also choose to use the current level of impingement mortality and entrainment as the calculation baseline. The calculation baseline may be estimated using: historical impingement mortality and entrainment data from your facility or from another facility with comparable design, operational, and environmental conditions; current biological data collected in the waterbody in the vicinity of your cooling water intake structure; or current impingement mortality and entrainment data collected at your facility. You may request that the calculation baseline be modified to be based on a location of the opening of the cooling water intake structure at a depth other than at or near the surface if you can demonstrate to the Director that the other depth would correspond to a higher baseline level of impingement mortality and/or entrainment.

Capacity utilization rate means the ratio between the average annual net generation of power by the facility (in MWh) and the total net capability of the facility to generate power (in MW) multiplied by the number of hours during a year. In cases where a facility has more than one intake structure, and each intake structure provides cooling water exclusively to one or more generating units, the capacity utilization rate may be calculated separately for each intake structure, based on the capacity utilization of the units it services. Applicable requirements under this subpart would then be determined separately for each intake structure. The average annual net generation should be measured over a five year period (if available) of representative operating conditions, unless the facility makes a binding commitment to maintain capacity utilization below 15 percent for the life of the permit, in which case the rate may be based on this